IN RE ARBITRATION BETWEEN:

TEAMSTERS LOCAL 320

And

BENTON COUNTY

DECISION AND AWARD OF ARBITRATOR
BMS 14-PN-0551

JEFFREY W. JACOBS

ARBITRATOR

July 7, 2014

IN RE ARBITRATION BETWEEN:

Teamsters Local 320

and

Benton County

DECISION AND AWARD OF ARBITRATOR
BMS Case # 14-PN-0551

APPEARANCES:

FOR THE UNION:

Paula Johnston, Attorney for the Union
Kari Sieme, Attorney for the Union
Terry Neuberger, Business Representative
Neil Jacobson, Deputy Sheriff

FOR THE COUNTY:

Terry Foy, Attorney for the County
Montgomery Headley, County Administrator
Jake Bauerly, County Commissioner
Joe Wollak, County Commissioner
Lee Katzmarek, HR Director

PRELIMINARY STATEMENT

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. Negotiation sessions were held and the parties negotiated in good faith but were ultimately unable to resolve certain issues with respect to the labor agreement. This is the parties' first labor agreement. The Bureau of Mediation Services certified 12 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated April 4, 2014. The parties were able to settle the general wage increase and health insurance issues and will be arbitrating only the issues listed below.

The hearing in the above matter was held on May 30, 2014 at the Benton County Courthouse in Foley, Minnesota. The parties submitted briefs that were received by the arbitrator on June 14, 2014 at which point the record was closed.

ISSUES PRESENTED

The issues certified at impasse by the BMS were as follows:

1. Wages 2014 – General Increase, Salary Tables
2. Wages 2015 - – General Increase, Salary Tables
3. Wages 2016 - – General Increase, Salary Tables

4. Wages – Market Adjustment – Salary Tables
5. Overtime – Calculation and Method and Exempt Qualification – Article 12.3
6. Holidays – Rate of pay for hours worked on holidays – Article 14.3
7. Insurance – Affordable Care Compliance Negotiations – Article 19.4 (new)
8. Insurance – Employer Contribution 2014 – 19.2
9. Insurance – Employer Contribution 2015 – 19.2
10. Insurance – Employer Contribution 2016 – 19.2
11. Uniforms – Uniform Allowance upon Termination – Article 20
12. Compensation Plan – Step Increase Qualification – Article 23.2 (new)

The parties were able to resolve issues #1, 2, 3, 8, 9, 10 at the hearing. In addition, issue # 12 was withdrawn by the County at the hearing. There were thus five issues remaining in dispute. Those are issues #'s 4, 5, 6, 7 and 11 set forth above.

WAGES – MARKET ADJUSTMENT – SALARY TABLES

UNION'S POSITION

The union argued that the members of this bargaining unit are significantly underpaid when compared to the appropriate external market and that in order to keep pace with the market, an adjustment paid in equal installments each year for four of the five members of the unit is warranted. The union seeks an additional 57 cents per hour at Grade 11 Step 11 of the salary schedule in 2014, 2015 and 2016; $1.02 for Grade 13 Step 11 in 2014, 2015 and 2016 and $2.10 per hour for Grade 14 Step 11 in 2014, 2015 and 2016. All adjustments are to be effective July 1st of each year. In support of its position the union made the following contentions:

1. ABILITY TO PAY: The union went through the County's financial situation and asserted that the County has a solid and strong tax base and more than enough tax capacity to pay the increase the union is seeking.

2. The union also noted that the actual amount this adjustment would cost is minimal and result in $1,185.60 per employee per year. The grand total of these adjustments would be $26,582.40 over the entire life of the agreement. When compared to the County's overall budget, these figures are minuscule and represent .0014% of the overall budget.

3. The union provided a financial analysis of the County's assets, liabilities, restricted and unrestricted funds, see union tab 4, along with a commentary by James Kimball, Director of the Economics and Contracts Department for the International Brotherhood of Teamsters. His analysis shows that the County is well positioned and very healthy financially. The impact on its financial position and overall budget in granting these modest increases would be minimal and easily sustainable. The union noted that the County had in 2012 $104.7 million in assets and only $18.3 million in liabilities. Its assets have grown by some $21.3 million over the past three years.

4. EXTERNAL COMPARISONS: The union first noted that the appropriate comparison group in the 7 contiguous counties to Benton County and those included in Development Group 7. The union took issue with external counties chosen by the employer and asserted that the additional counties should not be considered. The union further asserted that the employer provided no rationale for why these other counties were chosen and provided insufficient data on tax base, crime statistics, population or their overall economy to justify their use. The union argued that the County was thus "cherry picking" certain external jurisdictions to skew the numbers.

5. The union asserted that when comparing the Sergeant, Lieutenant and Captain positions in Benton County to the contiguous and Development region 7 counties, they are underpaid by a significant amount – for example the Lieutenant is nearly 19% underpaid in 2015.

6. The union asserted that the wage comparisons show an embarrassing discrepancy between Benton's pay for these employees yet the County has done nothing to bring these wages into line with other counties. While the union agreed to the general wage increases it maintains that a significant market adjustment is necessary for these employees.

7. The union argued that the figures show not only that the County can pay these increases but that it should pay them. There is no question that the economy in and around Benton County is improving and that the County has the ability to pay these increases. Moreover, these employees perform crucial and sometimes dangerous work on behalf of the residents and businesses of the County and deserve to be paid in accordance with the extraordinary value they bring to the County.

Accordingly, the Union asserted that the market adjustments set forth above are justified and should be awarded.

COUNTY'S POSITION

The County's position is for no additional market increases as requested by the union. In support of this position the County made the following contentions:

1. The County asserted that these market adjustments are nothing more than a thinly veiled attempt to get an additional 5% for the Sergeants, 8% for the Lieutenants and a whopping 16% increase for the Captains. There is nothing in recent history of collective bargaining negotiations in the state of Minnesota to justify such large increases.

2. ABILITY TO PAY. The County acknowledged that it is financially relatively healthy but that such increases would have a major impact on labor relations within the County. Benton has the lowest tax base and the smallest population of the Region 7W counties. It is also the smallest in size of the comparison counties.

3. Further the tax capacity actually decreased at an above average rate for the period between 2012 and 2014. Thus, the County is seeing slight decreases in tax capacity. It is currently only 43% of the average for the contiguous counties and traditionally has been at that same level. Thus, the union's claim that the County is somehow awash in money is incorrect and misleading.

4. EXTERNAL COMPARISONS: The County noted that this is a matter of some dispute and asserted that arbitrators in past cases have used the additional counties proposed to be used by the County in this matter. See, *LELS and Benton County*, BMS 00-PN-1261 (Towley Olson 2000).

5. The County went through the tax capacity and assessed value discussion and asserted again that Benton is something of an anomaly when compared to the rest of the Region 7W group in that its small size and relatively low assessed value and tax capacity shows that it really cannot pay the increases the union seeks. Its tax levy per capita is already one of the highest around the group and to add this additional cost would add that much additional tax burden onto a population that is taxed well above the average now.

6. The County asserted too that its already high tax rates have actually discouraged businesses from moving to Benton County and that others have expressed a desire to move out for the same reason. The County asserted that the union's "spendthrift" argument, i.e. that it will only cost a few thousand more each year must be rejected.

7. Also, the County pointed out that one of its major employer's was lost due to a tragic fire at the VERSO Paper plant in 2012. That plant will not be rebuilt and even though other businesses have moved to reuse parts of that facility, most of the jobs will be lost and those that remain will likely not pay as well. Moreover, due to this loss, the County's taxable market value fell by nearly $16 million due to the fire and explosion there.

8. Further, compensation costs have outpaced tax base growth every year since 2008. This also shows that the taxpayers are already saddled with increasing costs and a falling tax base – something that cannot be sustained.

9. The County argued that Region 7W is no longer a relevant comparison group. Benton is now in a very different position than it was when these groups were first determined and based on current conditions, the County should now be compared to other more relevant counties. Benton must be viewed at best as an anomaly within Region 7W given its small population, area and tax base. The County asserted that at this point the most appropriate comparison group to use includes those it provided as the basis for its arguments here.

10. Further, when compared to the external market, Benton County's wages have remained where they are for years. As many arbitrators have noted, one cannot pay above average wages everywhere.

11. INTERNAL COMPARISON. The County cited several prior awards in other locations for the proposition that internal consistency is now one of the most important factors in considering wage awards in interest arbitration. Here, the County asserted that there is no justification for such a large deviation from the internal pattern of settlements and that the union is simply seeking a wage increase that cannot be justified in any basis – external or internal. All of the other units within Benton County have settled and accepted the internal pattern of settlements. Only this one unit seeks an adjustment of this nature and the County argued that there was no justification for it. The County noted that this could result in a "whipsaw" effect on other units and result in a far higher cost than the union suggests – one must look at the overall impact of such an increase not merely at the cost of one small unit

12. The County noted that it has no problem with either attraction or retention of employees in these positions. It noted that only one employee has left the department from these positions in the past 5 years and that was due to retirement. The County also noted that there is thus no need to do a market adjustment under those circumstances either.

13. Finally, the County noted that for years it has maintained a consistent wage structure that the union wants to overturn in one fell swoop. This would create labor relations havoc within the County and undermine the process of negotiations and voluntary settlement of labor issues.

The County requests an award rejecting the union's position on the issue of market adjustment.

DISCUSSION OF WAGES – MARKET ADJUSTMENT

There were significant disputes about both whether the County could pay the requested increases and whether it should pay them. On both counts the County's arguments had greater merit.

First, while the total cost of the increases sought by the union seem at first blush to be modest when compared to the remainder of the overall budget, the County presented compelling and persuasive evidence that the tax base in Benton County was not as rosy as the union suggested. It lost a major employer in 2012 that will not be replaced, its tax base suffered significantly as the result of it as well as its tax capacity. The County also showed that even when compared to the Region 7W counties, it is indeed something of an anomaly in that it is smaller and has a lower population as well as a smaller tax base. There was persuasive evidence to show that its tax capacity is also smaller when compared to these counties. Significantly its per capita tax rates are indeed quite high. While the County could certainly pay this there would be a cost for doing that on an already high taxed county.

Moreover, the external comparisons do not support the union's argument here for a market increase. There was insufficient evidence to support the claim that these employees should be increased when compared to their counterparts in other counties – irrespective of whether one uses the County's comparison group or the union's comparison group.

As the County asserted, internal comparisons are indeed an important factor to use. Here there was merit to the County's contention that granting this increase would surely have an impact on labor relations and potentially undermine the clear policy in favor of voluntary settlement of labor agreements. There could thus on these facts, be a potential for whipsawing, just as the County suggests.

Further, the internal pattern of settlements shows that the vast majority of county employees have settled for a consistent pattern. This would be undermined as well in the future if the union's request were to be granted.

As many arbitrators dealing with interest arbitrations have noted, there must be a compelling reason for such a request to be granted – either due to some anomalous underpayment, problems of attraction or retention, a significant change in the underling job duties of a particular position or group of positions or some showing that the market has somehow left these employees behind.[1] The union presented insufficient evidence of any of these factors.

There was no showing that the job has changed so significantly that it warranted a major increase in salary beyond the general increases agreed to by the parties. Further, there was no showing of problems in attraction or retention in any of these positions. Finally, there was no showing of a compelling reason for this increase to be granted. It appeared to be a bald assertion by the union that these positions should jump up when compared to other counties – irrespective of which ones are used.

On this record, there was insufficient evidence to support the union's claims. Accordingly the County's position of no market adjustment wage increases is awarded.

AWARD ON WAGES - MARKET ADJUSTMENT

The County's position is awarded.

OVERTIME CALCULATION METHOD AND EXEMPT QUALIFICATION – ARTICLE 12.3

UNION'S POSITION

The union's position is for no change in existing language. In support of this the union made the following contentions:

1. The union asserted that no other unit in the County has this language and that there was no compelling reason for this to be inserted. Indeed, if the County's internal insistency position is adopted on other issues, it must also be adopted here and the County's position rejected.

[1] There may of course be other factors used in any particular case. This is by no means a comprehensive list. Here though, something more than was presented is required.

2. The union asserted that this is a significant change in the contract and would effectively undermine the contract. It would send overtime issues to County policy, which are of course non-negotiable, and take away benefits that have been negotiated into the contract.

3. The union noted that generally when one party wishes to change the contract in this manner there must be either a quid pro quo or a compelling need shown for the change. None are present here and the language should thus stay as is.

The union seeks an award for no change in the language of Article 12.3.

COUNTY'S POSITION

The County seeks a change in Article 12.3 of the CBA as follows:

> Employees classified as non-exempt under the Fair Labor Standards Act will be compensated in cash at one and one half (1½) times the base rate for hours worked in excess of the hourly total in the work period established in policy by the Sheriff ~~regularly schedule shift~~. Employee classified as exempt under the Fair labor Standards act shall receive compensatory time pursuant to the County personnel Policies. Changes of shift do not qualify employees for overtime under this Article. All overtime requests must have supervisory approval. (Changes to be added are underlined, language to be deleted are ~~stricken~~).

In support of this position the County made the following contentions:

1. The County disagreed with the union's characterization that this would "gut the contract. The County asserted that this is consistent with the Fair Labor Standards Act, FLSA, section K, and that the exemption applies only to law enforcement personnel. Thus no other non-law enforcement bargaining unit would even be affected by this language.

2. The County also asserted that this language is tied to the market adjustment request discussed above and that if these employees had successfully negotiated a market adjustment, the county would certainly have required the above changes as a quid pro quo to control overtime costs.

The County seeks an award amending the language of Article 12.3 set forth above.

DISCUSSION – OVERTIME CALCULATION METHOD AND OVERTIME EXEMPTION – ARTICLE 12.3

It was apparent that this was proposed by the County as a hedge against the eventuality that the market adjustment might be awarded in order to control overtime costs. Since the award above denied the union's request for a market adjustment there was little reason to award the County's position on this issue. Further, there was no showing of a compelling need for this change. There was for example no evidence that overtime is out of control nor that it is excessive.

Neither was there a showing of a quid pro quo or negotiated exchange of benefits for this language change. Generally, the party seeking to alter longstanding existing language must provide a quid pro quo for it or provide evidence of a compelling need for such a change. There was no such showing of either on this record.

AWARD ON OVERTIME CALCULATION METHOD AND EXEMPT QUALIFICATION – ARTICLE 12.3

The union's position is awarded.

HOLIDAY PAY - RATE OF PAY FOR HOURS WORKED ON HOLIDAYS ARTICLE 14.3

UNION POSITION

The union's position is for no change in existing language. In support of this the union made the following contentions:

1. The union objected to the employer's attempt to eliminate an employee's right to be paid 2 ½ times the hourly rate of pay if that employee works more than a normal shift on a holiday.

2. The union noted that it would never have agreed to this change in negotiations and that the standard by which interest arbitrations are frequently measured is to determine what the parties would have negotiated for themselves in bargaining. Here the union asserted most strenuously that this is something it would never have agreed to in bargaining.

3. Further there was again no quid pro quo or showing of a compelling need for this language and the arbitrator should reject it as well.

The union seeks an award for no change in existing language.

COUNTY'S POSITION

The County seeks to amend the language of Article 14.3 by deleting the sentence that currently reads as follows: "For normal schedule shift at two and one half (2½) times the normal hourly rate for all hours worked between 0001 and 2400 hours on the designated holiday which are in addition to the normal scheduled shift." In support of this the County made the following contentions:

1. The County pointed to external comparisons and asserted that none of the external comparison counties have such language in their labor agreements. Thus Benton County employees in this unit enjoy a benefit unique to any of the comparison jurisdictions.

2. Further, internally none of the non-law enforcement units have a like benefit. Finally this again was tied to the market adjustment issue and provided a possible hedge against that additional cost if that were to be awarded.

The County seeks an award for the changes outlined above,

DISCUSSION OF HOLIDAY PAY - RATE OF PAY FOR HOURS WORKED ON HOLIDAYS ARTICLE 14.3

The analysis of this issue is similar to that discussed immediately above. The County was unable to point to any quid pro quo or compelling need for this change. The County asserted that this was a costly benefit but provided insufficient evidence that it was so costly that a change was warranted to essentially take away a benefit that has been voluntarily negotiated into the labor agreement. Arbitrators should be cautious when confronted with requests to change to existing language that has been voluntarily negotiated into a labor agreement, especially when that change would take away an economic benefit.

Here that is precisely what appears to be behind this and again appeared to be a hedge against the market adjustment discussion above with regard to the overtime issue, the market adjustment was denied thus undermining the need for a change to this language as well. Accordingly, the union's position is awarded.

AWARD ON HOLIDAY PAY - RATE OF PAY FOR HOURS WORKED ON HOLIDAYS ARTICLE 14.3

The union's position is awarded.

INSURANCE – AFFORDABLE CARE ACT COMPLIANCE – NEW ARTICLE 19.4

UNION'S POSITION

The union first sought an award for no changes in the language based on the assertion that the arbitrator did not have the power to order the parties back to the table in the event the CBA was out of compliance with the ACA. The union asserted that if the arbitrator determined that there was jurisdiction to order the parties back to the table in this eventuality that the language of Article 19.4 include the following language (In bold type):

> "In the event the health insurance provisions of this Agreement fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to penalties, taxes or fines, the parties agree to meet immediately to negotiate revisions to this Agreement that will restore the Employer's health insurance plan to Compliance **provided that there will be no decrease in benefits to the employees.**"

In support of these various positions the union made the following contentions:

1. The union argued first that PELRA does not grant the arbitrator the power to order the parties to the table in the event a provision of the labor agreement is found to be out of compliance with applicable law. The County is seeking language that orders the parties to re-negotiate language in an existing CBA if the plan falls out of compliance with the ACA. Compliance with law is not a term or condition of employment and thus outside of the scope of interest arbitration.

2. The union noted that compliance with the law is not unique to the new ACA and is found in all sorts of other laws. The union cited the Local Government Pay Equity Act and asserted that if a County is out of compliance with that law it may face fines or other penalties but nowhere does the law require a renegotiation of benefits with its bargaining unit.

3. Further, the clear intent of the County's proposed language is to shift the burden of compliance onto the employees. Neither PELRA nor the ACA contemplates that. Thus, even if the arbitrator determines that this language should be added, the union insists that it include its final position language as set forth above so that there is no diminution of benefits to the employees.

The union seeks first no change in the language at all but in the alternative for the language it proposed above assuring that there be no diminution of benefits to employees.

COUNTY'S POSITION

The County seeks to add new language to the CBA as follows:

> "In the event the health insurance provisions of this Agreement fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to penalties, taxes or fines, the parties agree to meet immediately to negotiate revisions to this Agreement that will restore the Employer's health insurance plan to Compliance."

In support of this position the County made the following contentions

1. The County noted that several other units within the County have agreed to this language. Further, this language merely protects the County from ongoing liability if there is some portion of the law found to be inconsistent with the insurance plan. The County further noted that there is nothing here that would require the union or the affected employees to agree to a lower or lesser health insurance plan; it would merely require that the parties meet to negotiate something – just as they night if any other provisions of the CBA were found to be out of compliance with applicable law.

2. The County also noted that the arbitrator does have the jurisdiction under PELRA to order the parties to meet and negotiate a change in the CBA in the event the employer is found to be out of compliance. The severability clause of the contract contemplates such eventualities and would allow the remainder of the CBA to remain in effect even if a clause or some portion thereof is found to be out of compliance with applicable state or federal law.

3. Since the goal of interest arbitration is to determine that the parties would have negotiated for themselves, and since other units within the County, specifically AFSCME, the clerical unis and the IUOE #49, have agreed to this language, it is well within the purview of interest arbitration to award that based on the goal as stated in PELRA and consistent with the internal units that have agreed to this language.

The County seeks the insertion of the above language.

DISCUSSION OF INSURANCE – AFFORDABLE CARE ACT COMPLIANCE – NEW ARTICLE 19.4

Minn. Stat. 179A.16 subd 5 provides as follows:

> Subd. 5. Jurisdiction of the arbitrator or panel.
>
> The arbitrator or panel selected by the parties has jurisdiction over the items of dispute certified to and submitted by the commissioner. However, the arbitrator or panel has no jurisdiction or authority to entertain any matter or issue that is not a term and condition of employment, unless the matter or issue was included in the employer's final position. Any decision or part of a decision issued which determines a matter or issue which is not a term or condition of employment and was not included in the employer's final position is void and of no effect. A decision which violates, is in conflict with, or causes a penalty to be incurred under: (1) the laws of Minnesota; or (2) rules promulgated under law, or municipal charters, ordinances, or resolutions, provided that the rules, charters, ordinances, and resolutions are consistent with this chapter, has no force or effect and shall be returned to the arbitrator or panel to make it consistent with the laws, rules, charters, ordinances, or resolutions.

The law is clear and prevents the arbitrator from rendering a decision on matters that are not terms and conditions of employment "unless the matter or issue was included in the employer's final position." Here this issue was. Moreover, the union's final position as stated to the BMS was for the inclusion of the additional language set forth above. The issue of jurisdiction to render a decision at all was not raised until the hearing – at least on this record.

More to the point, the arbitrator must render a decision on all matters certified by the BMS and this was one of them. Accordingly, there is jurisdiction to render an award on this matter.

The next question is whether the arbitrator has the power to order the parties back to the negotiating table in the event a provision of the CBA is found to be out of compliance with the new ACA. There appears to be little precedent or authority for guidance on this question.

By analogy however it is clear that the current CBA has a "savings clause" that specifically calls for the parties to "enter not collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement' of any provision found to be invalid by operation of law. It is thus apparent that the provision sought by the County is entirely consistent with that provision and with the intent that a provision of the labor agreement cannot be invalid.

The remaining question is whether the language should read as the County suggests or as the union suggests. As discussed above, arbitrators should avoid reading a benefit out of the contract unless there is either a quid pro quo for it or there is a showing of a compelling need. Here there is both jurisdiction and a rational basis for the insertion of the language requested by the union set forth above. It is clear that the union would never have agreed to any provision that would diminish their health insurance benefits without such a showing.

Further, there is no internal pattern of settlements that supports the County's claim here. The other law enforcement unit has not agreed to this language and even though the AFSCME unit has that alone does not establish any sort of pattern. It is also unknown whether there was a quid pro quo granted for that. Accordingly, on this record, the union's position for the inclusion of the language with the last clause set forth above is awarded.

AWARD - INSURANCE – AFFORDABLE CARE ACT COMPLIANCE – NEW ARTICLE 19.4

The union's position is awarded with regard to the inclusion of the final clause set forth above. The new language of Article 19.4 shall read as follows:

> "In the event the health insurance provisions of this Agreement fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to penalties, taxes or fines, the parties agree to meet immediately to negotiate revisions to this Agreement that will restore the Employer's health insurance plan to Compliance provided that there will be no decrease in benefits to the employees."

UNIFORM ALLOWANCE ON TERMINATION – ARTICLE 20

UNION POSITION

The union seeks an award for no change in existing language. In support of this the union made the following contentions:

1. The union again argued that there is no quid pro quo for this reduction in benefit. The union also noted that this is in fact a reduction in a benefit since an employee's uniform allowance would be reduced by the pro-rated amount from the end of the year. There was no showing of any abuse of this benefit nor any other compelling need for it. Further there was no quid pro quo offered for it at all. The County merely seeks to reduce a negotiated benefit without justification

2. The union also maintained that it would not have agreed to this in negotiations without an exchange of benefits for it. Thus, applying the generally accepted standard used in interest cases, this change should be rejected by the arbitrator.

3. The union also cited other external jurisdictions and argued that there is no corresponding language of this type there. Neither is there anything of this nature in the other law enforcement unit in the County.

The union seeks an award for no change in the language.

COUNTY'S POSITION

The County seeks a change in the existing language of Article 20 as follows:

> The Uniform allowance for members of this bargaining unit shall be one thousand three hundred dollars ($1,300.00) per year per employee to be paid half the first pay period in January and half the first pay period in July. <u>The County shall withhold from the final paycheck of any terminating employee uniform allowance paid in advance pro-rated by month.</u> The Sherriff may require an employee to upgrade their uniform if necessary." (New language is <u>underlined</u>).

In support of this change the County made the following contentions:

1. The County currently pays $650.00 in January and another $650.00 in July. If an officer decides to leave in July but immediately after the payment of uniform allowance, the County is essentially out the money and has no way to recover it even though that officer will no longer be using his uniform and no longer providing service to the County or its residents. It is therefore manifestly unfair to allow that employee to get a cash payment for a uniform he/she no longer needs.

2. The County also asserted that this is in effect not a reduction of a benefit. The uniform allowance is designed to compensate the officers for uniforms – not to be a cash payment to be used for something else. It is intended to be a reimbursement for uniforms only and if the officer no longer needs it the payment is essentially wasted.

3. The County further asserted that the current economic and political climate mandates that taxpayer money not be used for a purpose other than for which it is intended and for something other than to provide a benefit to the County.

The County seeks an award of the proposed language set forth above,

DISCUSSION UNIFORM ALLOWANCE ON TERMINATION – ARTICLE 20

The essence of the County's claim is that an officer could wait until immediately after the first pay period in July and get the cash payment for uniforms and then leave, thus costing the County $650.00 for a uniform that an employee would no longer use. The arbitrator understands the conundrum but on this record there was no evidence that people have done that or that this is a problem. Without such a showing there was insufficient evidence of a compelling need for the change proposed by the County.

Further there was certainly nothing offered in exchange for this. Whether this was a true reduction in benefits was not entirely clear. The language does not require a receipt for the uniform or verification that the money was actually used to purchase a uniform or some equipment necessary for the officers to perform their jobs. The language merely provides for a cash payment that in supposed to be for uniforms.

Internally only the IUOE has anything similar to this but the other law enforcement units do not. Thus internal consistency favors the union on this record. Moreover, even the external comparisons support the union's position. Few of the external comparable units have pro-rated language like this. While external comparisons are of limited evidentiary value for this type of benefit the facts that they do not have it supports the position to leave the language as is without change. Accordingly, the union's position is awarded on this issue.

AWARD - DISCUSSION UNIFORM ALLOWANCE ON TERMINATION – ARTICLE 20

The union's position is awarded. No change in existing language.

SUMMARY OF AWARD

ISSUE #4 - AWARD ON WAGES - MARKET ADJUSTMENT

The County's position is awarded.

ISSUE #5 - AWARD ON OVERTIME CALCULATION METHOD AND EXEMPT QUALIFICATION – ARTICLE 12.3

The union's position is awarded.

ISSUES #6 - AWARD ON HOLIDAY PAY - RATE OF PAY FOR HOURS WORKED ON HOLIDAYS ARTICLE 14.3

The union's position is awarded.

ISSUE #7 - AWARD - INSURANCE – AFFORDABLE CARE ACT COMPLIANCE – NEW ARTICLE 19.4

The union's position is awarded with regard to the inclusion of the final clause set forth above. The new language of Article 19.4 shall read as follows:

> "In the event the health insurance provisions of this Agreement fail to meet the requirements of the Affordable Care Act and its related regulations or cause the Employer to be subject to penalties, taxes or fines, the parties agree to meet immediately to negotiate revisions to this Agreement that will restore the Employer's health insurance plan to Compliance provided that there will be no decrease in benefits to the employees."

ISSUE #11 - AWARD - DISCUSSION UNIFORM ALLOWANCE ON TERMINATION – ARTICLE 20

The union's position is awarded. No change in existing language.

Dated: July 7, 2014

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Jeffrey W. Jacobs, arbitrator